

II

(Acts adopted under the EC Treaty/Euratom Treaty whose publication is not obligatory)

DECISIONS

COUNCIL

COUNCIL DECISION

of 19 March 2007

amending Decision 2001/822/EC on the association of the overseas countries and territories with the European Community

(2007/249/EC)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community and in particular Article 187 thereof,

Having regard to the proposal from the Commission,

Whereas:

- (1) Council Decision 2001/822/EC of 27 November 2001 on the association of the overseas countries and territories with the European Community (the Overseas Association Decision) ⁽¹⁾ establishes the legal framework for promoting the economic and social development of the overseas countries and territories (OCTs) and for enhancing economic relations between them and the Community. The Overseas Association Decision applies until 31 December 2011. To coincide with the duration of the 10th European Development Fund (2008 to 2013) (10th EDF) and the multiannual financial framework 2007 to 2013, it should be extended until 31 December 2013.
- (2) Annex II A of the Overseas Association Decision lays down the financial allocations for the period 2000 to 2007. In the light of the newly established 10th EDF, the amount for the period 2008 to 2013 should be allocated.
- (3) Provisions should be made for rules governing the transition from the ninth EDF to the 10th EDF as far as the

OCTs are concerned. Those rules should be established in accordance with the general rules on the commitment of funds of the ninth EDF and of previous EDFs after 31 December 2007 set out in Article 1 of Decision 2005/446/EC of the Representatives of the Governments of the Member States meeting within the Council of 30 May 2005 setting the deadline for the commitment of the funds of the ninth EDF ⁽²⁾ and in Article 1(3) and (4) of the Internal Agreement between the Representatives of the Government of Member States meeting within the Council, on the financing of Community aid under the multiannual framework for the period 2008 to 2013 in accordance with the ACP-EC Partnership Agreement and the allocation of financial assistance for the OCTs to which Part Four of the EC Treaty applies ⁽³⁾ (Internal Agreement establishing the 10th EDF).

- (4) The Internal Agreement establishing the 10th EDF lays down an overall amount of EUR 286 million to be allocated to the OCTs. The apportionment of that amount between, on the one hand, the different instruments for development finance cooperation related to the EDF, and on the other hand, the criteria and elements for determining the beneficiary OCTs' initial indicative allocations, should be laid down.
- (5) Regarding the apportionment between the different instruments for development finance cooperation related to the EDF, coordination should be ensured in particular between support to regional cooperation and integration and support at territorial level, to enhance the resilience of the OCTs towards the challenges that they are facing regardless of their GNP per capita or other elements used to determine the territorial allocations.

⁽¹⁾ OJ L 314, 30.11.2001, p. 1.

⁽²⁾ OJ L 156, 18.6.2005, p. 19.

⁽³⁾ OJ L 247, 9.9.2006, p. 32.

- (6) The financial assistance to the OCTs should be allocated on the basis of standard, objective and transparent criteria. Such criteria should include, in particular, the level of GNP of an OCT, the size of its population and continuity with previous EDFs. Special treatment should be reserved for the least developed OCTs referred to in Annex I B of the Overseas Association Decision, as well as for OCTs which, due to geographical isolation or other constraints, have more difficulties in engaging in regional cooperation and integration.
- (7) When reporting expenditure within the EDF to Member States and the Development Assistance Committee of the Organisation for Economic Cooperation and Development (OECD), the Commission should distinguish between Official Development Assistance (ODA) and non-ODA activities.
- (8) Special attention should be paid to strengthening the institutional capacities of the OCTs and to good governance, including in the financial, tax and judicial areas.
- (9) Special attention should also be paid to strengthening cooperation between OCTs, ACP States and the outermost regions referred to in Article 299(2) of the Treaty or other actors in the respective regions in which OCTs are situated.
- (10) The terms and conditions of financing in relation to the operations of the OCT Facility referred to in Annex II C of the Overseas Association Decision should be brought into line with the revision of the corresponding Articles in Annex II of the Partnership Agreement between, on the one hand the members of the African, Caribbean and Pacific Group of States, and on the other hand the European Community and its Member States, signed in Cotonou on 23 June 2000 ⁽¹⁾ (the ACP-EC Partnership Agreement).
- (11) It is crucial to ensure continuity as regards the eligibility of OCTs for funding from the general thematic budget lines of the General Budget of the European Union, outside the EDF. The thematic Regulations referred to in Annex II E of the Overseas Association Decision have been replaced by Regulation (EC) No 1905/2006 of the European Parliament and of the Council of 18 December 2006 establishing a financing instrument for development cooperation ⁽²⁾ from 1 January 2007. Annex II E should therefore be amended in order to replace references to those Regulations with a reference to the new financing instrument. In order to ensure continuity, such amendment should apply as from 1 January 2007.
- (12) Taking into account the special relationship between the OCTs and the Member States to which they are linked, the possible participation of OCTs in horizontal Community programmes should be generalised so that the OCTs are allowed to participate in the programmes that are open to the Member States to which the OCTs are linked, subject to the rules and objectives of the programmes and the arrangements applicable to the Member States to which the OCTs are linked. In order to allow participation of the OCTs from the beginning of the new programming period, this amendment should be introduced from 1 January 2007.
- (13) A review covering all aspects of European Union spending and resources, including OCTs funding, should be conducted on the basis of a report by the Commission in 2008 to 2009.
- (14) The current technical amendments are without prejudice to subsequent revision of the Overseas Association Decision, in particular pursuant to Article 62 thereof,

HAS DECIDED AS FOLLOWS:

Article 1

Council Decision 2001/822/EC is hereby amended as follows:

1. in Article 23, the fourth subparagraph shall be replaced by the following:

‘The financial and accounting procedures applicable to development finance cooperation for the OCTs by virtue of the ninth EDF shall be those laid down in the ninth EDF Financial Regulation. The financial and accounting procedures applicable to development finance cooperation for the OCTs by virtue of the 10th EDF shall be those laid down in the 10th EDF Financial Regulation.’;

2. the following paragraph shall be added to Article 24:

‘9. For the implementation of the 10th EDF, the respective provisions of the Internal Agreement establishing the 10th EDF shall be applicable.’;

3. in Article 25(1), the words ‘the period from 2000 to 2007’ shall be replaced by the words ‘the periods from 2000 to 2007 and from 2008 to 2013’;

⁽¹⁾ OJ L 317, 15.12.2000, p. 3. Agreement as last amended by Decision No 1/2006 of the ACP-EC Council of Ministers (OJ L 247, 9.9.2006, p. 22).

⁽²⁾ OJ L 378, 27.12.2006, p. 41.

4. Article 31 shall be replaced by the following:

'Article 31

Technical assistance

1. On the initiative of or on behalf of the Commission, studies or technical assistance measures may be financed in order to ensure the preparation, monitoring, evaluation and supervision necessary for implementing this Decision and the overall evaluation of this Decision referred to in Article 1(1)(c) of Annex II A.

Such studies or technical assistance measures shall be financed by the overall grant allocation.

2. On the initiative of the OCTs, studies or technical assistance measures may be financed in relation to the implementation of the activities contained in the SPD, subject to the Commission's opinion.

In the framework of the 9th EDF, such studies or technical assistance measures shall be financed from the allocation of the OCTs concerned. In the framework of the 10th EDF, they shall be financed by the overall grant allocation.;

5. the following Article shall be inserted:

'Article 33a

1. After 31 December 2007, or after the date of entry into force of the Internal Agreement establishing the 10th EDF if this date falls later, balances from the ninth EDF or from previous EDFs shall no longer be committed, with the exception of the balances and funds decommitted after this date of entry into force resulting from the system guaranteeing the stabilisation of export earnings from primary agricultural products (Stabex) under the EDFs prior to the ninth EDF and the remaining balances and reimbursements of the funds allocated under the ninth EDF to finance the resources of the Facility set out in Annex II C, excluding the related interest rate subsidies.

2. Funds decommitted from projects under the ninth EDF or from previous EDFs after 31 December 2007 shall no longer be committed, unless decided otherwise by the Council unanimously, on the basis of a proposal by the Commission, with the exception of the Stabex funds decommitted after this date of entry into force which shall be automatically transferred to the respective territorial indicative programmes financed in accordance with

Article 3(1) of Annex II Aa and of the funds allocated under the ninth EDF to finance the resources of the Facility set out in Annex II C, excluding the related interest rate subsidies.;

6. Article 58 shall be replaced by the following:

'Article 58

Programmes open to the OCTs

Individuals from an OCT and, where applicable, the relevant public and/or private bodies and institutions in an OCT, shall be eligible for Community programmes, subject to the rules and objectives of the programmes and the arrangements applicable to the Member State to which the OCT is linked. The programmes shall apply to OCT nationals within the framework of the quota for the Member State to which the OCT concerned is linked, if the programme concerned uses such a quota.

The main programmes that are open to the OCTs are those listed in Annex II F, as well as any programme succeeding them.;

7. in Article 63, the year '2011' shall be replaced by '2013';

8. in Article 1(1)(c) of Annex II A, the words 'two years' shall be replaced by 'four years';

9. after Annex II A, a new Annex II Aa shall be inserted, the text of which appears in Annex I to this Decision;

10. Annex II B shall be amended as follows:

(a) Article 1 shall be replaced by the following:

'Article 1

1. An amount of up to EUR 20 million as laid down in Article 5 of the Internal Agreement establishing the ninth EDF shall be provided by the EIB in the form of loans from its own resources in accordance with the conditions provided for by its statutes and this Annex.

2. An amount of up to EUR 30 million as laid down in Article 3 of the Internal Agreement establishing the 10th EDF shall be provided by the EIB in the form of loans from its own resources in accordance with the conditions provided for by its statutes and this Annex.;

(b) in Article 2(2), point (c) shall be replaced by the following:

'(c) during the period covered by the ninth EDF, the amount of the interest rate subsidy calculated in terms of its value at the times of disbursement of the loan shall be charged against the interest subsidy allocation laid down in Annex II A, Article 3(3)(d), and paid directly to the EIB;

during the period covered by the 10th EDF, the amount of the interest rate subsidy calculated in terms of its value at the times of disbursement of the loan shall be charged against the interest subsidy allocation laid down in Annex II Aa, Article 1(1)(b), and paid directly to the EIB;

Interest subsidies may be capitalised or used in the form of grants to support project-related technical assistance, particularly for financial institutions in the OCTs.;

11. Annex II C shall be replaced by the text appearing in Annex II to this Decision;

12. Annex II E shall be replaced by the text appearing in Annex III to this Decision;

13. Annex II F shall be replaced by the text appearing in Annex IV to this Decision.

Article 2

Taking of effect

This Decision shall take effect on the day of its publication in the *Official Journal of the European Union*.

However, Article 1, points (6), (12) and (13) shall apply from 1 January 2007.

Done at Brussels, 19 March 2007.

For the Council

The President

H. SEEHOFER

ANNEX I

'ANNEX II Aa

COMMUNITY FINANCIAL ASSISTANCE: 10th EDF*Article 1***Allocation between the various instruments**

1. For the purposes of this Decision, for the six-year period from 1 January 2008 to 31 December 2013, the overall amount of Community financial assistance of EUR 286 million under the 10th EDF fixed by the Internal Agreement establishing the 10th EDF shall be allocated as follows:

- (a) EUR 250 million in the form of grants for programmable support for long-term development, humanitarian aid, emergency aid, refugee aid and additional support in the event of fluctuations in export earnings as well as for support for regional cooperation and integration;
- (b) EUR 30 million to finance the OCT Investment Facility referred to in Annex II C and of which a maximum amount of EUR 1,5 million is set aside to fund the interest subsidies for operations to be financed by the EIB from its own resources, in accordance with Annex II B, or under the OCT Investment Facility;
- (c) EUR 6 million to studies or technical assistance measures in accordance with Article 31 of this Decision.

2. The funds of the 10th EDF may no longer be committed after 31 December 2013, unless the Council decides otherwise unanimously, on a proposal from the Commission.

3. Should the funds provided for in paragraph 1 be exhausted before this Decision expires, the Council shall take the appropriate measures.

*Article 2***Administration of resources**

The EIB shall administer the loans made from its own resources referred to in Annex II B, as well as the operations financed under the OCT Investment Facility referred to in Annex II C. All other financial resources under this Decision shall be administered by the Commission.

*Article 3***Allocation between the OCTs**

The amount of EUR 250 million mentioned in Article 1(1)(a) shall be allocated on the basis of the needs and performance of the OCTs in accordance with the following criteria:

- 1. An amount A of EUR 195 million shall be allocated to the OCTs in particular to finance the initiatives referred to in the Single Programming Documents, including priority actions for social development and environmental protection, within the framework of the fight against poverty. Where appropriate, the Single Programming

Documents shall pay particular attention to actions aimed at strengthening governance and the institutional capacities of the beneficiary OCTs and, where relevant, the likely timetable of the envisaged actions.

The allocation of amount A shall take into account the size of the population, the level of Gross National Product (GNP), the level and use of previous EDF allocations, constraints due to geographical isolation and structural and other obstacles of the least developed OCTs mentioned in Article 3 of this Decision. Any allocation shall be such as to allow its effective use. It should be decided in conformity with the principle of subsidiarity.

This amount shall, in principle, be allocated to the OCTs with a per capita GNP not exceeding the Community per capita GNP, according to the available statistical data.

- 2. EUR 40 million shall be allocated to support regional cooperation and integration in accordance with Article 16 of this Decision, including the dialogue and partnership actions laid down in Article 7, regional disaster preparedness and alleviation initiatives and, in coordination with other Community financial instruments, cooperation between the OCTs and the most remote regions referred to in Article 299(2) of the Treaty.
- 3. Paragraph 1 shall not apply to Greenland.
- 4. A non-allocated reserve B of EUR 15 million shall be set aside to:
 - (a) finance humanitarian, emergency and refugee aid for the OCTs and, if necessary, the additional support in the event of fluctuations in export earnings, in accordance with Annex II D;
 - (b) make new allocations in accordance with the development of the needs and performance of the OCTs referred to under paragraph 1.

Performance shall be evaluated in an objective and transparent way, taking into account the use of the allocated resources, the effective implementation of the ongoing operations, the alleviation or reduction of poverty and the sustainable development measures adopted.

- 5. In accordance with the paragraphs 1, 2, 3 and 4, the indicative amounts allocated under the 10th EDF shall be adopted by the Commission, in accordance with Article 24 of this Decision.
- 6. The Commission, following a mid-term review, may decide on different allocation of any non-allocated funds mentioned in this Article. The procedures for this review and the decision on any new allocation shall be adopted in accordance with Article 24 of this Decision.'

ANNEX II

ANNEX II C

COMMUNITY FINANCIAL ASSISTANCE: THE OCT INVESTMENT FACILITY

Article 1

Objective

An OCT Investment Facility (the Facility) shall be set up to promote commercially viable enterprises, mainly in the private sector, but also those in the public sector supporting private sector development.

The terms and conditions of financing in relation to the operations of the Facility and the loans from own resources of the EIB shall be as laid down in this Annex and Annex II B. For the implementation of the ninth EDF, Articles 29 and 30 of the ninth EDF Internal Agreement shall apply. For the implementation of the 10th EDF, the respective provisions of the Internal Agreement establishing the 10th EDF shall apply.

These resources may be channelled to eligible enterprises, either directly or indirectly, through eligible investment funds and/or financial intermediaries.

Article 2

Resources of the Facility

1. The resources of the Facility may be used, *inter alia*, to:

(a) provide risk capital in the form of:

(i) equity participation in OCT enterprises, including financial institutions;

(ii) quasi-capital assistance to OCT enterprises, including financial institutions;

(iii) guarantees and other credit enhancements which may be used to cover political and other investment-related risks, both for foreign and local investors or lenders;

(b) provide ordinary loans.

2. Equity participation shall, in general, be for non-controlling minority holdings and shall be remunerated on the basis of the performance of the project concerned.

3. Quasi-capital assistance may consist of shareholders' advances, convertible bonds, conditional, subordinated and participating loans or any other similar form of assistance. Such assistance may consist in particular of:

(a) conditional loans, the servicing and/or the duration of which shall be linked to the fulfilment of certain conditions with regard to the

performance of the project; in the specific case of conditional loans for pre-investment studies or other project-related technical assistance, servicing may be waived if the investment is not carried out;

(b) participating loans, the servicing and/or the duration of which shall be linked to the financial return of the project;

(c) subordinated loans, which shall be repaid only after other claims have been settled.

4. The remuneration of each operation shall be specified when the loan is made.

However:

(a) in the case of conditional or participating loans, the remuneration shall normally comprise a fixed interest rate of not more than 3 % and a variable component related to the performance of the project;

(b) in the case of subordinated loans, the interest rate shall be market related.

5. Guarantees shall be priced so as to reflect the risks insured and the particular characteristics of the operation.

6. The interest rate of ordinary loans shall comprise a reference rate applied by the EIB for comparable loans with the same terms and conditions as to grace and repayment periods and a mark up determined by the EIB.

7. Ordinary loans may be extended on concessional terms and conditions in the following cases:

(a) for infrastructure projects in the least developed OCTs, in post-conflict OCTs or in post-natural disaster OCTs that are prerequisites for private sector development. In such cases, the interest rate of the loan will be reduced by 3 %;

(b) for projects which involve restructuring operations in the framework of privatisation or for projects with substantial and clearly demonstrable social or environmental benefits. In such cases, loans may be extended with an interest rate subsidy the amount and form of which will be decided with respect to the particular characteristics of the project. However, the interest rate subsidy shall not be higher than 3 %.

The final rate of loans falling under (a) or (b) shall, in any case, never be less than 50 % of the reference rate.

8. The funds to be provided for these concessional purposes will be made available from the Facility and shall not exceed 5 % of the overall amount allocated for investment financing by the Facility and by the EIB from its own resources.

9. Interest subsidies may be capitalised or may be used in the form of grants. Up to 10 % of the budget for interest rate subsidies may be used to support project-related technical assistance, particularly for financial institutions in the OCTs.

Article 3

Operations of the Facility

1. The Facility shall operate in all economic sectors and support investments of private and commercially run public sector entities, including revenue generating economic and technological infrastructure critical for the private sector. The Facility shall:

- (a) be managed as a revolving fund and aim at being financially sustainable. Its operations shall be on market-related terms and conditions and shall avoid creating distortions on local markets and displacing private sources of finances;
- (b) support the OCT financial sector and have a catalytic effect by encouraging the mobilisation of long-term local resources and attracting foreign private investors and lenders to projects in the OCTs;
- (c) bear part of the risk of the projects it funds, its financial sustainability being ensured through the portfolio as a whole and not from individual operations; and
- (d) seek to channel funds through OCT institutions and programmes that promote the development of small and medium-sized enterprises (SMEs).

2. The EIB shall be remunerated for the cost incurred in managing the Facility. For the first two years after the entry into force of the second financial protocol, this remuneration shall be up to an amount of 2 % a year of the total initial endowment of the Facility. Thereafter, the remuneration of the EIB shall include a fixed component of 0,5 % a year of the initial endowment and a variable component of an amount of up to 1,5 % a year of the portfolio of the Facility that is invested in projects in OCTs. The remuneration shall be financed out of the Facility.

3. On expiry of this Decision, and in the absence of a specific decision by the Council, the cumulative net reflows to the Facility shall be carried over to the next OCT Financial Instrument.

Article 4

Conditions for foreign exchange rate risk

In order to minimise the effects of exchange rate fluctuations, the problems of exchange rate risk shall be dealt with in the following way:

- (a) in the case of equity participation designed to strengthen an enterprise's own funds, the exchange rate risk shall, as a general rule, be borne by the Facility;
- (b) in the case of risk capital financing for SMEs, the exchange rate risk shall as a general rule be shared, on the one hand, by the Community, and on the other hand, by the other parties involved. On average, the foreign exchange rate risk shall be shared equally;
- (c) where feasible and appropriate, particularly in countries characterised by macroeconomic and financial stability, the Facility will endeavour to extend loans in local OCT currencies, thus taking the foreign exchange risk.

ANNEX III

ANNEX II E

COMMUNITY FINANCIAL ASSISTANCE: BUDGETARY AID FOR DEVELOPING COUNTRIES

Without prejudice to future amendments to budgetary provisions, the OCTs shall benefit from the following actions adopted for developing countries within the general budget of the European Union:

1. Thematic programmes covered by Regulation (EC) No 1905/2006 of the European Parliament and of the Council of 18 December 2006 establishing a financing Instrument for Development Cooperation ⁽¹⁾ (DCI) and providing direct support for the European Community development and cooperation policy.
2. Rehabilitation and reconstruction operations as covered by Regulation (EC) No 1717/2006 of the European Parliament and the Council of 15 November 2006 establishing an Instrument for Stability ⁽²⁾.
3. Humanitarian aid as provided for by Council Regulation (EC) No 1257/96 of 20 June 1996 concerning humanitarian aid ⁽³⁾.

⁽¹⁾ OJ L 378, 27.12.2006, p. 41.

⁽²⁾ OJ L 327, 24.11.2006, p. 1.

⁽³⁾ OJ L 163, 2.7.1996, p. 1. Regulation as last amended by Regulation (EC) No 1882/2003 of the European Parliament and of the Council (OJ L 284, 31.10.2003, p. 1).

ANNEX IV

ANNEX II F

OTHER COMMUNITY ASSISTANCE: PARTICIPATION IN COMMUNITY PROGRAMMES

In accordance with Article 58 of this Decision, the following programmes and any programmes succeeding them, among others, shall apply to OCT nationals, within the framework of the quota for the Member State to which the OCT concerned is linked if the programme concerned uses such a quota:

1. Education and training programmes:

- an action programme in the field of lifelong learning (2007 to 2013), established by Decision No 1720/2006/EC of the European Parliament and of the Council of 15 November 2006 establishing an action programme in the field of lifelong learning ⁽¹⁾;
- the “Youth in Action” programme (2007 to 2013), established by Decision No 1719/2006/EC of the European Parliament and of the Council of 15 November 2006 establishing the “Youth in Action” programme for the period 2007 to 2013 ⁽²⁾.

2. The programmes of the “Competitiveness and Innovation Framework” programme (CIP) (2007 to 2013), established by Decision No 1639/2006/EC of the European Parliament and of the Council of 24 October 2006 establishing a “Competitiveness and Innovation Framework” programme (2007 to 2013) ⁽³⁾.3. The programmes of the seventh framework programme of the European Community, established by Decision No 1982/2006/EC of the European Parliament and of the Council of 18 December 2006 concerning the seventh framework programme of the European Community for research, technological development and demonstration activities (2007 to 2013) ⁽⁴⁾.

4. Cultural and audiovisual programmes:

- programme of support for the European audiovisual sector (MEDIA 2007), established by Decision No 1718/2006/EC of the European Parliament and of the Council of 15 November 2006 concerning the implementation of a programme of support for the European audiovisual sector (MEDIA 2007) ⁽⁵⁾;
- Culture (2007 to 2013), established by Decision No 1903/2006/EC of the European Parliament and of the Council of 12 December 2006 establishing the “Culture” programme (2007 to 2013) ⁽⁶⁾.

5. The HRTP Japan programme (human resources training programme in Japan) and topical missions, provided for by Council Decision 92/278/EEC of 18 May 1992 confirming the consolidation of the EC-Japan Centre for Industrial Cooperation ⁽⁷⁾.

⁽¹⁾ OJ L 327, 24.11.2006, p. 45.

⁽²⁾ OJ L 327, 24.11.2006, p. 30.

⁽³⁾ OJ L 310, 9.11.2006, p. 15.

⁽⁴⁾ OJ L 412, 30.12.2006, p. 1.

⁽⁵⁾ OJ L 327, 24.11.2006, p. 12.

⁽⁶⁾ OJ L 378, 27.12.2006, p. 22.

⁽⁷⁾ OJ L 144, 26.5.1992, p. 19.